

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ECHOSTAR SATELLITE LLC, a Colorado corporation, ECHOSTAR TECHNOLOGIES CORPORATION, a Texas corporation, and NAGRASTAR LLC, a Colorado corporation,

Plaintiffs,

v.

FINISAR CORPORATION, a Delaware corporation,

Defendant.

Case No. 06-0425-JJF

DECLARATION OF THOMAS B. KENWORTHY

THOMAS B. KENWORTHY, acknowledging that this declaration is made under penalty of perjury, states upon personal knowledge, information and belief that the following facts are true and correct:

1. I am a partner in the law firm of Morgan, Lewis & Bockius LLP and one of the counsel for Finisar Corporation ("Finisar"), the defendant in this action.

2. On August 1, 2006, I had a telephone conversation with Richard Morse, one of the counsel for plaintiffs in this action. I advised Mr. Morse that in Finisar's view, the Court lacked subject matter jurisdiction over this matter because there were ongoing licensing negotiations that had not broken down at the time suit was filed, that plaintiffs did not have a

reasonable apprehension of imminent litigation at the time suit was filed, and that even if there were a justiciable case or controversy, it would be appropriate for the Court to decline to exercise declaratory judgment jurisdiction. In light of this, I proposed that plaintiffs dismiss this action without prejudice and that in exchange for such a voluntary dismissal, Finisar would agree that any litigation between the parties involving the '505 patent would proceed in the District of Delaware.

3. On August 2, 2006, I received a telephone call from William Kuhner, one of plaintiffs' counsel from Morrison & Foerster LLP, following up on the proposal that I had made to Mr. Morse regarding a dismissal of the case without prejudice. Mr. Kuhner indicated that I would need to speak with Harold McElhinny.

4. I thereafter spoke to plaintiffs' lead counsel, Harold J. McElhinny, on August 3, 2006, and reiterated this proposal. Mr. McElhinny advised that he had to discuss this issue with his client and that he would get back to me.

5. On August 9, 2006, I sent an e-mail message to Mr. McElhinny, inquiring as to whether there was "[a]ny word on dismissal without prejudice" and received a response from Mr. McElhinny later that day that "EchoStar has been 'pondering' this since you and I spoke. I will let you know as soon as I get instructions." A true and correct copy of that exchange of e-mails is attached hereto as Exhibit A.

6. On August 14, 2006, I received an e-mail response from Mr. McElhinny in the nature of a counterproposal which was that EchoStar was "willing to extend the time to respond to October 8, 2006. That should give the parties an opportunity to assess the September

27 meeting [scheduled between executives of the parties]." A true and correct copy of this e-mail is attached hereto as Exhibit B.

7. I responded that same day and accepted the "offer of an additional extension until October 8 to respond to the Complaint, should the parties not be able to reach an amicable resolution before then," noting that this acceptance was with the understanding that the response Finisar may file would likely include a motion to dismiss for lack of justiciable controversy or for the Court to decline to exercise its discretion to entertain this declaratory judgment proceeding.

8. On September 6, 2006, I received an e-mail from Mr. Morse, a true and correct copy of which is attached hereto as Exhibit C, in which EchoStar proposed yet another extension until October 23, 2006. It was subsequently explained that because the scheduled meeting of executives of our respective clients to discuss a possible license had to be postponed, this additional extension was "to allow Finisar and EchoStar to meet and to assess their meeting before Finisar responds to the complaint."

DATED: November 14, 2006



THOMAS B. KENWORTHY

CERTIFICATE OF SERVICE

I, ARTHUR G. CONNOLLY, III, do hereby certify that on this date, true and correct copies of the foregoing were served upon the following counsel via ECF and as follows:

VIA HAND DELIVERY

Josy W. Ingersoll, Esquire
Richard H. Morse, Esquire
Young Conaway Stargatt & Taylor, LLP
1000 West Street
The Brandywine Building, 17th Floor
P. O. Box 391
Wilmington, Delaware 19899

VIA FEDERAL EXPRESS

Harold J. McElhinny, Esquire
Rachel Krevans, Esquire
William J. Kuhne, Esquire
Jason A. Crotty, Esquire
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105

Attorneys for Plaintiffs
EchoStar Satellite LLC,
EchoStar Technologies Corporation,
and NagraStar LLC

DATED: November 14, 2006

Arthur G. Connolly III
ARTHUR G. CONNOLLY, III (No. 2667)

Exhibit A



"McElhinny, Harold J."
<HMcElhinny@mofo.com>
08/09/2006 07:22 PM

To tkenworthy@morganlewis.com
cc
bcc
Subject Re: EchoStar v. Finisar

Echostar has been "pondering" this since you and I spoke. I will let you know as soon as I get instructions.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: tkenworthy@morganlewis.com <tkenworthy@morganlewis.com>
To: McElhinny, Harold J. <HMcElhinny@mofo.com>
Sent: Wed Aug 09 15:34:18 2006
Subject: EchoStar v. Finisar

Any word on dismissal without prejudice?

Thomas B. Kenworthy
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5702
(215) 963-5001 (fax)

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Exhibit B



"McElhinny, Harold J."
<HMcElhinny@mofo.com>
08/14/2006 02:03 PM

To tkenworthy@morganlewis.com
cc "Kuhne, William (Bill) J." <WKuhne@mofo.com>
bcc
Subject RE: EchoStar v. Finisar

History: This message has been replied to and forwarded.

Tom:

Sorry for the delay.

Echostar's counterproposal is that Echostar is willing to extend Finisar's time to respond to October 8, 2006. That should give the parties an opportunity to assess the September 27 meeting.

If this is acceptable, please prepare the stipulation.

Harold

-----Original Message-----

From: tkenworthy@morganlewis.com [mailto:tkenworthy@morganlewis.com]
Sent: August 09, 2006 3:34 PM
To: McElhinny, Harold J.
Subject: EchoStar v. Finisar

Any word on dismissal without prejudice?

Thomas B. Kenworthy
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5702
(215) 963-5001 (fax)

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Exhibit C



"Morse, Richard"
<rmorse@ycst.com>
09/06/2006 03:33 PM

To tkenworthy@morganlewis.com
cc "Kuhne, William (Bill) J." <WKuhne@mofo.com>
bcc

Subject FW: Echostar: Stipulation Extending Time to Respond to
Complaint.DOC

History: This message has been replied to and forwarded.

Tom,

Here is a new stip extending time. If it meets with your
approval please have it signed and sent back to me.
Rich

Richard H. Morse
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
Phone: 302-571-6651
Facsimile: 302-576-3319
rmorse@ycst.com

>
> From: Drummond, Constance
> Sent: Wednesday, September 06, 2006 3:23 PM
> To: Morse, Richard
> Subject: Echostar: Stipulation Extending Time to Respond to
> Complaint.DOC
>
> <<(5500652_1)_Echostar_ Stipulation Extending Time to Respond to
> Complaint.DOC>>



(5500652_1)_Echostar_ Stipulation Extending Time to Respond to Complaint.DOC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ECHOSTAR SATELLITE LLC, a Colorado corporation; ECHOSTAR TECHNOLOGIES CORPORATION, a Texas corporation, and NAGRASTAR LLC, a Colorado corporation,

Plaintiffs,

v.

FINISAR CORPORATION, a Delaware corporation,

Defendant.

Case No. 06-0425

STIPULATION EXTENDING TIME TO RESPOND TO COMPLAINT

It is hereby stipulated and agreed by the parties, subject to the approval of the Court, that the time within which defendant Finistar Corporation must answer, move or otherwise plead in response to the Complaint is hereby extended from October 8, 2006 until October 23, 2006. Two previous extensions have been granted.

Josy W. Ingersoll (No. 1088)
Richard H. Morse (No. 531)
The Brandywine Building, 17th Floor
1000 West Street
P.O. Box 391
Wilmington, Delaware 19899
(302) 571-6651
rmorse@ycst.com

Attorneys for Plaintiffs

DATED: _____

David W. Marston, Jr., (No. 3972)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5937

Attorney for Defendant

APPROVED this _____ day of September, 2006

United States District Judge